(b) You must also take all necessary and reasonable steps to ensure non-discrimination in the award and administration of contracts and agreements covered by this part.

(c) You must include the following assurances in all concession agreements and management contracts you execute with any firm after April 21, 2005:

(1) ''This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

(2) ''The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.''

§ 23.11 What compliance and enforcement provisions are used under this part?

The compliance and enforcement provisions of part 26 (§§ 26.101 and 26.105 through 26.109) apply to this part in the same way that they apply to FAA recipients and programs under part 26.

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

§ 23.13 How does the Department issue guidance, interpretations, exemptions, and waivers pertaining to this part?

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 23 and issued after April 21, 2005, express the official positions and views of the Department of Transportation or the Federal Aviation Administration.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, and the FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or the FAA, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 23.

(c) You may apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation or the FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(d) You can apply for a waiver of any provision of subpart B or D of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate an ACDBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of subpart B or D of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the FAA. The application must include a specific program proposal and address how you will meet the criteria of paragraph (d)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the ACDBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—